

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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WAYNE WESTCOTT,

Plaintiff,

-against-

THE PEPSI BOTTLING COMPANY OF NEW
YORK, INC., et al.,

Defendants.
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ORDER

07 Civ. 2410 (BMC)(KAM)

COGAN, District Judge.

Plaintiff's requests in the Status Report, filed on December 7, 2007 [25], for additional discovery on the hi-lo and for the deposition of Frank Vaccaro are disposed of as follows:

1. The request as to the hi-lo is denied as there is no factual basis for the additional discovery and no legal basis for it exists either. The Court of Appeals decision in Ortega v. City of New York, 9 N.Y.3d 69, -- N.E.2d -- (2007), effectively overruled any preexisting precedent for this claim.
2. The Court grants the request to take the deposition of Mr. Vaccaro, provided that it is taken within 10 days of entry of this Order on ECF.
3. As to the issues regarding payment, the Court deems these issues moot.

The Court waives the premotion conference requirement for defendants' proposed motion for summary judgment. The Court sets the following schedule for summary

judgment: 1) defendants to file motion by 12/28/07; 2) plaintiff's opposition by 1/18/08;
and 3) defendants' reply by 2/1/08.

SO ORDERED.

s/Brian M. Cogan

U.S.D.J.

Dated: Brooklyn, New York
December 7, 2007